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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1320

RAYMOND KASSEL, et al.,

Appellants

v.

CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE,
A Delaware Corporation

Appellee

On Appeal From The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE COMMONWEALTH OF VIRGINIA AS AMICUS CURIAE

MARSHALL COLEMAN,
Attorney General of Virginia

WALTER A. MCFARLANE,
Deputy Attorney General

JOHN M. MCCARTHY
Assistant Attorney General

1101 East Broad Street
Supreme Court Building
Richmond, Virginia 23219

QUESTIONS PRESENTED

A. Is The Balancing Test Of *Pike** The Appropriate Standard Of Review For A Legitimate State Highway Safety Regulation Challenged Under The Dormant Commerce Clause?

B. Is The Special Deference Due A Legitimate State Highway Safety Regulation Diminished Because Of Its Application To A Portion Of The Interstate System?

C. In Dormant Commerce Clause Litigation, Should The Validity Of A Legitimate State Highway Regulation Rest Upon Whether There Existed Significant Evidence Upon Which The Legislature Could Have Rationally Made Its Choice?

D. Where The Legislative Process Is Continuing, Should The Court Intervene To Dictate A Result Under The Dormant Commerce Clause?

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* *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970).

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INTERESTS OF THE AMICUS CURIAE

Though the Commonwealth is vitally concerned with the maintenance of safety upon the highways, and limits the actual length of any combination of vehicles to 55 feet (§ 46.1-330, Code of Virginia (1950), as amended), it is not these considerations alone that prompt her file this amicus brief. Rather Virginia's concern also arises because she believes the District Court below manifestly failed to give proper deference to a choice made by the Iowa legislature amidst discrete, conflicting safety considerations and, instead, determined the relative

weight which it felt should have been properly assigned by the legislature to these competing safety considerations. Approval by this Court of the analyses employed by the District Court would well have grave consequences both for the concept of federalism generally and for the traditional deference that has been accorded state legislative choices in the area of highway safety when challenged under a dormant Commerce Clause.[1]

She is aware that apparent congressional inaction in an area where uniformity seems appropriate to some may prompt a more activist approach by the judiciary.[2] She suggests, however, that such cure in the long run could prove worse than the perceived malady, i.e., a judicial willingness to decide policy issues constitutionally delegated to Congress will more likely provoke less, rather than more, congressional responsiveness. The setting of size, configuration and weight limits for trucks is peculiarly a legislative function.

STATEMENT OF THE CASE

The Commonwealth of Virginia adopts the Appellant's statement of the case.

SUMMARY OF ARGUMENT

While the standard of review generally applicable to regulations challenged under the Commerce Clause is that

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[1] U.S. CONST. art. I, § 8, cl. 3.

[2] *Cf. Consolidated Freightways Corp. of Del.* v. *Kassel*, 475 F. Supp. 544, 552 (S.D. Iowa 1979) (calling for Congressional pre-emption of interstate trucking regulations).

balancing test set forth in *Pike* v. *Bruce Church, Inc.*,[3] that case itself recognized the more sensitive issue posed by state legislation in the field of safety. The Court has long recognized that balancing human safety against economic interests is preeminently a legislative task. Since the state litigant could not even make a "colorable showing" that the regulation challenged in *Raymond Motor Transp. Inc.* v. *Rice*[4] made a contribution to safety, there was no occasion to apply the principle of *Brotherhood of Loc. Firemen & Eng'r* v. *Chicago R. I. & Pac. R. R.*[5] Rather than representing a departure from established principles, *Raymond* was consistent with *Bibb* v. *Navajo Freight Lines, Inc.*[6] where the Court had earlier concluded that state-mandated contoured mud flaps were identical in their safety properties to conventional ones required elsewhere.

Raymond recognized the sensitive consideration that arises in the review of state highway safety regulations. Despite this *caveat*, the District Court subjected the wisdom of the Iowa law to a *de novo* review and, though it acknowledged that the prohibited longer twins were less safe than the shorter semis in some salient respects,[7] found them to be "overall. . .as safe as a semi".[8] The District Court concluded upon this finding that the law's contribution to safety was so slight that it could not justify its interference with interestate commerce.[9]

While the District Court correctly noted that ninety percent of the funding of Interstate roads originates with Congress, and

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[3] 397 U.S. 137 (1970).

[4] 434 U.S. 429 (1978).

[5] 393 U.S. 129 (1968).

[6] 359 U.S. 520 (1959).

[7] *Consolidated Freightways Corp. of Del.* v. *Kassel*, 475 F. Supp. 544, 549 (S.D. Iowa 1979).

[8] *Id.* at 548.

[9] *Id.* at 549.

that Congress exercises a pervasive role in the standards of their construction and maintenance, these factors were neutral on the deference due the state legislation by the District Court. Though Congress has recognized that the Interstate System is intended to serve the needs of interstate commerce, it has also declared that "local needs" should be given "equal consideration."

The special deference due state highway safety considerations rests upon three basic considerations identified by *Raymond* but not addressed by the courts below. These considerations, applicable to the regulation in issue, should have strengthened the presumption of the regulation's validity.

The presumption of validity enjoyed by state highway safety measures is demonstrably so strong that the cases striking them down have been "few in number." Because highways are locally built and maintained and the conditions governing their use vary greatly from one locality to another, the deference shown their safety regulations has been consistently greater than the deference shown corresponding state railroad regulations.

While the Iowa statutory scheme prohibits sixty-five foot (65′) twins and not their *less* stable sixty foot (60′) counterparts, it must be recalled that Iowa's statutory scheme exhibits a safety concern for both configuration and length. It cannot be questioned that the length of a vehicle bears some rational relationship to its safety. Since legalization of the sixty foot (60′) may be realistically viewed as representing a legislative compromise of opposing forces' interests, the force which desired, and benefited from, that compromise should not be permitted to advantage itself in litigation from its seeming inconsistency with the statute's remaining provisions. State laws should not be declared unconstitutional merely because their schemes of classification are imperfect and this is especially so when they are challenged under the dormant Commerce Clause. Although hindsight may inform one that the sixty foot

(60′) twin is, in its stability aspect, safer than its longer, prohibited counterpart, requiring scientific precision of state legislation would be to subject the legislative process to an intolerable judicial supervision at odds with the basic principles of our government.[10]

In the instant case, the District Court weighed in the judicial scales the conceded merits and demerits of the longer twins and rejected the regulation prohibiting them because in its view "the weight of the evidence presented in court appear-[ed] to favor a different standard." The District Court granted no recognition to the Iowa legislature's right of discretion to determine that certain dangerous proclivities of the longer twins were worthy of special concern.

The Court has never held that the proponent of a safety regulation must prove in court by a preponderance of the evidence that it advances safety. The test should be whether there existed significant evidence upon which the legislature could have rationally made its choice. *Raymond,* in contradistinction to the case at hand, represents a unique situation in that the regulation's proponents "virtually defaulted" in producing "even colorable" evidence that it advanced safety.

It would be inappropriate to employ a "weight of the evidence" test developed in Commerce Clause litigation generally when reviewing the validity of state highway safety regulations. The validity of these measures should not be utterly at the mercy of the impressive litigation resources of their often nationally well-organized opponents.

Since the legislative process here is a continuing one and may resolve this dispute, the Court should defer to that process.

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[10] *Sproles* v. *Binford,* 286 U.S. 374, 388 (1932).

ARGUMENT

I

Under the Dormant Commerce Clause, It Is Inappropriate To Balance Non-comparable, Safety Benefits And Economic Burdens; Absent Congressional Action, A Legitimate Highway Safety Regulation Must Be Upheld.

There is no doubt that the standard of review to be applied in commerce litigation *generally* is that enunciated by the Court in *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970); *See Philadelphia* v. *New Jersey*, 437 U.S. 617, 624 (1978).[11] However, *Pike* itself set to one side the question of "state legislation in the field of safety where the propriety of local regulations has long been recognized." 397 U.S. at 143. *Pike* dealt with interstate shipment of cantaloupes, an appropriate item for balancing in an economic sense; here, however, it would be impossible for the Court "to say that financial losses should be balanced against the loss of lives and limbs of workers and people using the highways." *Brotherhood of Loc. F. & E.* v. *Chicago R. I. & P. R. Co.*, 393 U.S. 129, 140 (1968). That judgment involves a policy consideration for the legislature. *Id.* at 138.

The continuing relevance of *Brotherhood* was recognized in *Great Western United Corporation* v. *Kidwell*, 577 F.2d 1256 (5th Cir. 1978). In declaring Idaho's corporate takeover law unconstitutional under the Securities Exchange Act of 1934, the Fifth Circuit rejected appellant's Commerce Clause argument. Though *Brotherhood's* holdings were held not relevant in that case because an economic benefit and burden were being

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[11] The Fourth Circuit has described *Pike's* test as a three-pronged one: "We therefore must decide (1) whether the Virginia automobile franchise statute promotes a legitimate local purpose (2) whether it treats interstate and intrastate commerce evenhandedly, and (3) whether the burden imposed on interstate commerce appears excessive when balanced against the state's interest." *American Motors Sales Corporation* v. *Division of Motor Vehicles*, 592 F.2d 219, 222 (4th Cir.) *cert. den.*, ____ U.S. ____, 100 S.Ct. 71 (1979).

balanced under the *Pike* formulation, the Court observed: "*Pike* balancing is inappropriate when the benefit of state legislation and the burden on interstate commerce are non-comparable." *Id.* at 1282 n. 54.

While at first glance there seems to be a general significance in the omission of any discussion of *Brotherhood* in *Raymond Motor Trans. Inc.* v. *Rice,* 434 U.S. 429 (1978), the unique situation presented in *Raymond* made the *Brotherhood* approach inapposite. Since there was not "even a colorable showing" of a contribution to safety made by Wisconsin in *Raymond, Id.* at 448, there was no occasion to treat the legislation there in issue with the great deference demanded to be shown to state regulations governing highway safety. Thus the *Raymond* situation was properly analyzed, *not* as a case involving a state highway safety regulation, but rather as an *economic* case to which the test adopted by the unanimous Court in *Pike* was applicable.[12]

II

State Highway Safety Measures Are Entitled to Special Deference.

Raymond recognized the "sensitive consideration" that occurs in reviewing state highway regulations. 434 U.S. at 441. The District Court, however, applied a somewhat mechanical balancing test by means of which it tallied up the safety reasons both favoring and opposing the regulation, and, finding them in their aggregates in apparent equipoise ("safe as, if not safer

[12] Even if the *Pike* balancing test were held applicable to the instant case, it would appear that the regulation should be upheld inasmuch as Iowa treats intra-state and out-of-state interests in an evenhanded manner. *Cf. Philadelphia* v. *New Jersey,* 437 U.S. at 626 (In holding New Jersey could not prohibit the importation of only that waste originating outside the State, the Court said, "And it may be assumed as well that New Jersey may pursue those ends by slowing the flow of *all* waste into the State's remaining landfills even though interstate commerce may be incidentally affected." *Id.*).

than" 475 F. Supp. at 548), concluded that the regulation would at best make a slight contribution to safety which could not be balanced against its interference with interstate commerce. *Id.* at 549. The proper inquiry should have been whether all the salient safety considerations favored the longer trucks "so overwhelmingly" that a legislature, motivated by considerations of safety, could not have *rationally chosen* to prohibit them.[13] *See Raymond*, 434 U.S. at 447.

A. The Reasons For This Special Deference Are Present Here.

The special deference granted to state highway safety regulations rests upon three considerations: (1) where such regulations are not on their face discriminatory to interstate commerce, their burdens fall equally on in-state and out-of-state economic interests, thereby insuring that the state's political processes check burdensome regulations, (2) the states are primarily responsible for their highways and (3) highway conditions vary from state to state. *Id.* at 444 n. 18. The courts below did not address these three considerations, though their presence should have strengthened the presumption of validity enjoyed by the regulation in issue.

Likewise, *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959) correctly struck down an Illinois statute; since there was no showing of a genuine safety consideration, the regulation

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[13] In *South Carolina State Highway Department* v. *Barnwell Bros.*, 303 U.S. 177, 191-92 (1938), Justice Stone stated:

> Since the adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice, its constitutionality is not to be determined by weighing in the judicial scales the merits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard .... Hence, in reviewing the present determination we examine the record, not to see whether the findings of the court below are supported by evidence, but to ascertain upon the whole record whether it is possible to say that the legislative choice is without *rational basis.* (Emphasis added).

could not overcome the burdens which it placed on interstate commerce. "The contour mud flaps law burdened the flow of commerce through Illinois in 1959 just as the length and configuration regulations burden the flow through Wisconsin today. It was shown that neither the mud flaps nor the regulations contributed to highway safety." *Raymond,* 434 U.S. at 451 (J. Blackmun concurring). *Raymond* and *Bibb* thus stand for the sensible proposition that judicial scrutiny of *alleged* state highway safety regulations will be heightened when there is no legitimate showing of a safety consideration. The peculiarly local nature of highways, identified in *South Carolina Highway Department* v. *Barnwell Bros.,* 303 U.S. 177 (1938), was sufficient to distinguish the case of *Southern Pacific Co.* v. *Arizona,* 325 U.S. 761 (1945), where a state railroad regulation was struck down. The Court has traditionally accorded a greater deference to highway safety regulations. The Court in *Arizona* expressly recognized the continuing application of *Barnwell's* holding to highway safety legislation. 325 U.S. at 783.

B. The Special Deference Due State Highway Safety Regulations Should Not Be Diminished By Reason Of Congressional Involvement In The Interstate System.

An undue emphasis was given by the District Court to the fact that "[n]inety percent of the costs [of the Interstate System in Iowa] was financed by federal funds." 475 F. Supp. at 550. The fact that the Interstate System is involved should in no wise diminish the concern evidenced in *Barnwell,* 303 U.S. at 190, and in *Raymond,* 434 U.S. at 443, for the great deference due state regulations adopted to promote highway safety. Assuming, for argument's sake, that the Spending Clause[14] would permit Congress to require uniformity in the area of truck length and configuration, Congress has not chosen to require such uniformity. Further, by declaring that Interstate projects, along with other federal-aid highways, provide for a "federally

[14] U.S. CONST. art. I, § 8, cl. 1.

assisted State program," Congress has implied that federal funding of the Interstate system should not furnish a reason for infringing upon traditional state prerogatives. 23 U.S.C. § 145.

While the District Court correctly noted that the Interstate System is intended to serve the needs of interstate traffic, Congress has expressly noted that the system's intended function is not so limited by declaring that "local needs" should be given "equal consideration with the needs of interstate commerce." 23 U.S.C. §101(b).

The District Court's attendant observation, that the federal government plays a pervasive role in the design, construction, maintenance and regulation of interstate highways could well lend support to the validity of a congressional enactment in the field at issue. (The conceded presence of that pervasive role establishes that, in the case of the Interstate System, Congress will intervene when it feels such intervention is desirable.) Congress' otherwise pervasive role, however, lends no support whatever to federal judicial intervention in an area of state legislation in which Congress has chosen not to act.

III

The Standard of Review Employed By The District Court "Second-Guessed" The Legislature And Invaded Its Prerogative To Choose Amidst Competing Considerations.

The District Court found that, while longer twins have safety advantages, "they are more likely than semis to jackknife or upset" and that they can be successfully "backed only for a short distance." It concluded, however, that "[t]he negative characteristics are not such that they render the twins less safe than semis *overall.*" 475 F. Supp. at 549 (emphasis supplied). From these statements alone, it is apparent that the District Court invaded the prerogative of Iowa's legislative process to make a rational choice from among discrete, competing safety considerations.

In understanding that both the District Court and the Circuit Court[15] misread the proper standard of review, it is helpful to recall some long standing principles governing review of state highway safety regulations. There is a strong presumption of validity for state safety measures (*Bibb,* 359 U.S. at 524) and, if the safety justifications are not "illusory", courts will not sit to second-guess legislative judgment. *Raymond,* 434 U.S. at 449 (J. Blackmun concurring). That presumption is so strong that the cases are "few in number" which have struck down highway safety regulations as unconstitutionally burdensome. *See Bibb,* 359 U.S. at 529. Finally, highways traditionally have been recognized as a subject of peculiarly local concern. *See Barnwell,* 303 U.S. at 187. They are locally built and maintained and conditions relating to their use vary from locality to locality. *Id.*

The District Court's opinion finds that Iowa "has practically destroyed its argument that double trailers are an additional safety hazard by legalizing the 60 foot twin." 475 F. Supp. at 549. However, Iowa's statutes exhibit a safety concern over the *length* of vehicles as well as over their configuration.[16] That the length of a vehicle considered alone bears a relationship to its safety should require no citation. Every State in the Union imposes some limitations on vehicular length. While it may have been more consistent for the legislature to prohibit both the sixty-five foot (65') twin *and* its shorter counterpart, "viewed realistically" it may be presumed that the legalization of the sixty foot (60') twin is the "product of compromise" between those forces that wished to retain a general limit of fifty-five feet (55') and the trucking industry which, no doubt, desired an even longer limit. *See Raymond,* 434 U.S. at 447. There would appear to be some measure of injustice in permitting an interest group, having once achieved a measure of success through legislative compromise, to then use the very

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[15] *Consolidated Freightways Corp. of Del.* v. *Kassel,* 612 F.2d 1064, 1070 (8th Cir. 1979).

[16] *See* Appendix, Iowa Code § 321.457.

legislative embodiment of that compromise as a weapon to gain by litigation that which could not be won through the legislative process. *Cf. Greenhills Home Own. Corp.* v. *Village of Greenhills,* 5 Ohio St.2d 207, 215 N.E.2d 403, 408 *cert. den.* 335 U.S. 836 (1966) (party encouraging enactment of zoning ordinance and deriving benefit therefrom estopped from attacking validity thereof on constitutional grounds). Rewarding such a tack would stultify the very legislative process upon which the resolution of this general controversy must ultimately depend. Moreover, in a more sensitive area, the Court has held that where rationality is the test, a State "does not violate the [non-dormant] Equal Protection Clause merely because the classifications by its laws are imperfect." *Massachusetts Bd. of Retirement* v. *Murgia,* 427 U.S. 307 (1976), citing *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970). Surely no stricter scrutiny of classification should be applied to legislation challenged under the dormant Commerce Clause.

Although it may be true that, in hindsight, the sixty-five foot (65′) twin is safer in its stability aspect than the sixty foot (60′) twin, "[t]o make scientific precision a criterion of constitutional power would be to subject the state to an intolerable supervision hostile to the basic principles of our government. . . ." *Sproles* v. *Binford,* 286 U.S. 374, 388 (1932).

This is not a case, as was *Raymond Motor Transportation, Inc.* v. *Rice,* where a legislature may be deemed to have acted in an apparent void of supporting evidence to prohibit longer trailers. Nor does it present a case where a State, as in *Raymond,* has acted in apparent self-interest to discriminate both explicitly and impliedly against foreign industries.[17]

What we have then is simply a court disagreeing with a legislature over the latter's choice made in the midst of

[17] "The Court is of the opinion that none of the pertinent regulations discriminate against interstate commerce. The Court is also of the opinion that CF did not establish unequal or improper enforcement of the law of regulations." 475 F. Supp. at 553.

competing safety considerations. Thus, the District Court in the appendix to its opinion notes with approval a statistician's disparagement of statistical evidence that supported the legislative choice. The legislative choice is thus held to a standard informed by hindsight. This, of course, is a far different matter from concluding that there was *no evidence* upon which the Iowa legislature could have made a rational choice.

The situation presented here is factually far removed from that presented in *Bibb* v. *Navajo Freight Lines, Inc. Bibb* presented a case where a State was attempting to innovate upon an established and generally accepted safety device. Here it is an industry that is attempting to bring a State's preexisting law into line with its own innovation. Moreover, in *Bibb* the contoured mud flaps which state regulation would have required were expressly found to possess "no advantages in terms of safety over the conventional mud flaps." 359 U.S. at 525. This Court did *not* say that the contoured mud flaps presented no advantages *overall.* Such a holding would have been contrary to the Court's long adhered to policy of not "second guessing" a legislative judgment, i.e., not "weighing in the judicial scales the merits or the demerits of the legislative choice and rejecting it if the weight of evidence presented in court appears to favor a different standard." *Barnwell,* 303 U.S. at 191. The instant case rather presents a situation in which a district court concluded, *on its scales of balance* (i.e., "overall"), that the legislative choice *should have been* in favor of the longer twins. No allowance in the District Court's weighing process is made for the Iowa legislature's right to view with a heightened concern, for example, the enhanced proclivities of twins to "jackknife or upset."

An examination of the District Court's own opinion demonstrates that Iowa advanced significant evidence to sustain the legitimacy of its own regulation as a safety measure. In *Raymond,* the majority noted that Wisconsin failed to make even a "colorable showing" that its fifty-five foot (55′) limit contributed to highway safety and Justice Blackmun's con-

curring opinion framed the issue in terms of the "illusory" nature of the State's safety justification. Whether the operative words are hereafter to be "colorable showing" or "illusory", it is obvious that tested under both articulations Iowa produced sufficient evidence.

That "significant evidence" upon which the legislature could have rationally made its determination should be the standard to be applied to a State's showing seems clear in view of *Raymond's* holding that the State cannot prevail where it virtually defaults in producing evidence. The Court has never held that the proponent of safety legislation must prove by a preponderance of evidence that "overall" it advances safety.[18] Indeed, the presumption has hitherto rested in favor of the validity of a safety measure. *Bibb,* 359 U.S. at 524 (1959).

The situation here vis-a-vis *Raymond,* is nearly the obverse of that presented in the Georgia blow-post cases, where the Court did not hesitate to change its view of a regulation based upon a later, more informing record. *See Southern Railway Co.* v. *King,* 217 U.S. 524 (1910) (state regulation requiring trains to slow at crossings upheld since railroad's pleadings did not even allege sufficient facts to support a burden on interstate commerce); *Seaboard Airline R. Co.* v. *Blackwell,* 244 U.S. 310 (1917) (same regulation held unlawful as a direct burden on interstate commerce upon allegation that six hours would be added to the run). *Raymond* would be consonant with a decision upholding the legislation in issue: "[W]e do not decide whether laws of other states. . .would be upheld if the evidence produced were not so overwhelmingly one-sided as in this case." 434 U.S. at 447 (footnote omitted).

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[18] *Cf., Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151, 186-87, n. 8 (J. Marshall dissenting in part) stating: "A showing that there is conflicting evidence is not sufficient to undercut the presumption that a State's police power has been exercised in a rational manner." Justice Marshall cited *Brotherhood, supra,* with approval in his dissent.

IV

The Validity of A State Highway Safety Regulation Should Not Be Totally At The Mercy Of The Weight Of The Evidence Developed In A Post-Enactment Attack Upon Its Constitutionality.

It is respectfully submitted that it would be inappropriate for the courts to place emphasis upon the "weight of the evidence" developed at trial in litigation over the validity of state highway safety measures. In absence of apparent parochialism, the purpose of legislation is deemed to be the very reasons advanced by the legislature. *See Philadelphia* v. *New Jersey,* 437 U.S. at 624. Uniquely perhaps, in *Raymond* the claimed legislative purpose may be perceived as having been questionable since numerous locally-oriented exemptions to Wisconsin's fifty-five foot (55') rule cast grave doubt on the alleged safety purpose while at the same time strongly implying a prejudice in favor of local interests. Here, however, the District Court was specific in stating that "none of the pertinent regulations discriminate against interstate commerce." 475 F. Supp. at 553. If anything, the consistent application of these exemptions underscores the legitimacy of Iowa's safety concerns.

Although there is seemingly little excuse for a party's total default in meeting a burden of a "colorable showing", as was apparently the case in *Raymond,* at the other extreme, the validity of state safety regulations should not be utterly at the mercy of the often impressive litigation resources of their nationally well-organized opponents. Tushnet, *Reexamining the Dormant Commerce Clause,* 1979 Wis. L. Rev. 125, 161.

V

The Dispute Underlying This Case Will Continue To Be Worked Out By The Legislative Process.

There is reason to anticipate that the ongoing political process may bring Iowa in conformity with her surrounding

States. Court interference at this time would usurp the legislative function, *See Brotherhood,* 393 U.S. at 138; *Barnwell,* 303 U.S. at 191.

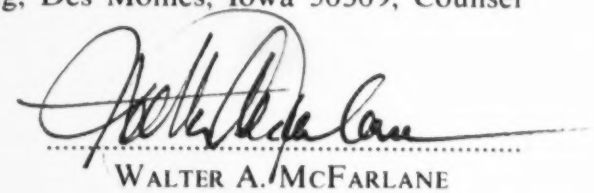
The case thus presents a dispute which will, given judicial restraint, "continue to be worked out in the legislature" *Brotherhood,* 393 U.S. at 144. The veto of Iowa's Governor alone now sustains the law in question.

CONCLUSION

For the reasons set forth in this brief, the Commonwealth of Virginia respectfully requests that this Court reverse the decision of the Circuit Court and refrain from enjoining enforcement of Iowa Code § 321.457. This statute, challenged under the dormant Commerce Clause, is a legitimate state highway safety regulation, is presumed to be valid and is supported by significant evidence upon which the legislature could have rationally made its choice.

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 1980, three copies of the foregoing Amicus brief were mailed, first class postage prepaid, to the Honorable Mark E. Schantz, Solicitor General of Iowa, Hoover State Office Building, Des Moines, Iowa 50312, counsel for Appellants, Raymond Kassel, et al and to John H. Lederer, Esquire, 121 South Pinckney Street, Madison, Wisconsin 53703, and to Terry C. Hancock, Esquire, 110 Des Moines Building, Des Moines, Iowa 50309, Counsel for Appellees.



WALTER A. MCFARLANE

APPENDIX

Article I, Section 8, Clause 1 of the United States Constitution

"Section 8. The Congress shall have power to. . .provide for the common defense and general welfare of the United States. . . ."

Article I, Section 8, Clause 3 of the United States Constitution

"Section 8. The Congress shall have power. . .To regulate commerce. . .among the several states. . . ."

Section 101(b) of Title 23 of the United States Code

(b) It is hereby declared to be in the national interest to accelerate the construction of the Federal-aid highway systems, including the National System of Interstate and Defense Highways, since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, for the national and civil defense.

It is hereby declared that the prompt and early completion of the National System or Interstate and Defense Highways, so named because of its primary importance to the national defense and hereafter referred to as the "Interstate System", is essential to the national interest and is one of the most important objectives of this Act. It is the intent of Congress that the Interstate System be completed as nearly as practicable over the period of availability of the thirty-four years' appropriations authorized for the purpose of expediting its construction, reconstruction, or improvement, inclusive of necessary tunnels and bridges, through the fiscal year ending September 30, 1990, under section 108(b) of the Federal-Aid Highway Act of 1956 (70 Stat. 374), and that the entire System in all States be brought to simultaneous completion. Insofar as possible in consonance with this objective, existing highways located on an interstate route shall be used to the extent that such use is practicable,

suitable, and feasible, it being the intent that local needs, to the extent practicable, suitable, and feasible, shall be given equal consideration with the needs of interstate commerce.

It is further declared that since the Interstate System is now in the final phase of completion it shall be the national policy that increased emphasis be placed on the construction and reconstruction of the other Federal-aid systems in accordance with the first paragraph of this subsection, in order to bring all of the Federal-aid systems up to standards and to increase the safety of these systems to the maximum extent.

Section 145 of Title 23 of the United States Code

§ 145. Federal-State relationship

The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The provisions of this chapter provide for a federally assisted State program.

Section 321.457 of the Iowa Code (1979)

321.457 *Maximum length.* The maximum length of any motor vehicle or combination of vehicles, except fire fighting apparatus and vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot be dismembered readily when required for emergency repair of public service facilities or properties, and such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on

both sides and marker lamps upon the extreme ends of any projecting load to mark clearly the dimensions of such load, at which time, a member of the state highway patrol shall be notified prior to the operation of such vehicle, shall be as follows:

1. No single truck, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

2. No single bus, unladen or with load, shall have an overall length, inclusive of front and rear bumpers, in excess of forty feet.

3. Except as to combinations of vehicles, provisions for which are otherwise made in this chapter, no combination of truck tractor and a semitrailer hauling livestock shall have an overall length, inclusive of front and rear bumpers, in excess of sixty feet, nor shall any other combination of vehicles coupled together, unladen or with load, have an overall length, inclusive of front and rear bumpers in excess of fifty-five feet. Combinations of vehicles consisting of a motor vehicle upon which a van box is fastened and which draws and bears a portion of the weight of a semitrailer purchased by an Iowa resident prior to April 16, 1974, may be operated on the highways of this state with a length exceeding fifty-five feet but not exceeding sixty feet, if a special overlength permit is obtained from the department for such operation. This special overlength permit shall be issued for the vehicle and such permit shall be valid until such time as the vehicle is no longer operable or until the owner of the vehicle transfers title to the vehicle to a nonresident. All such vehicles purchased after April 16, 1974, shall not be allowed to operate on the highways of this state.

4. However, a mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided, however, that the mobile home and

its towing unit shall not be in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck or 'pickup' shall not be construed to be a motor truck. Further providing that a portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that such vehicle or combination of vehicles drawing such loading chute is not in excess of the legal length provided for such vehicles or combinations.

5. No combination of vehicles coupled together which are used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, travel trailers, boats, farm and industrial tractors and self-propelled farm implements, nonself-propelled implements of husbandry, and self-propelled vehicles shall have an unladen length, inclusive of front and rear bumpers in excess of sixty feet, but the passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, or boats being transported may extend up to three feet beyond the front and rear bumpers of the transporting vehicles when the overall length of the vehicle with load does not exceed sixty-five feet.

6. No combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, shall have an overall length, inclusive of front and rear bumpers in excess of sixty feet.

7. A motor vehicle or combination of vehicles may be operated upon the highways of this state, irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles

is in conformity with the laws relating to length and weight of the abutting state on July 1, 1974. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 code of federal regulations, paragraphs 1048.10, 1048.38, and 1048.101 as they exist on July 1, 1974.

Section 46.1-330, Code of Virginia (1950), as amended

§ 46.1-330. Length of vehicles; generally; special permits; buses with safety bumpers.—No motor vehicle exceeding a length of forty feet shall be operated upon a highway of this State. The actual length of any combination of vehicles coupled together including any load thereon shall not exceed a total of fifty-five feet; and no tolerance shall be allowed that exceeds twelve inches. Provided, however, that the State Highway and Transportation Commission when good cause is shown, may issue a special permit for combinations in excess of fifty-five feet including any load thereon where the object or objects to be carried cannot be moved otherwise; and passenger buses in excess of thirty-five feet, but not exceeding forty feet, may be operated on the streets of incorporated cities and towns when authorized pursuant to § 46.1-180; and provided further, that vehicles designed and used exclusively for the transportation of motor vehicles may have an additional load overhang not to exceed five feet; and provided further, that in an emergency as defined in § 46.1-339.1 the towing of disabled vehicles which cannot be separated for safety, physical or mechanical reasons and which exceed fifty-five feet in length shall be permissible for the purpose of towing any such vehicle to the nearest facility which can make the necessary repairs but not more than fifty miles from the point such vehicle

was disabled; and provided further, that passenger buses may exceed the forty-foot limitation when such excess length is caused by the projection of a front safety bumper or a rear safety bumper or both. Such safety bumper shall not cause the length of the bus to exceed the maximum legal limit by more than one foot in the front and one foot in the rear. "Safety bumper" means any device which may be fitted on an existing bumper or which replaces the bumper and is so constructed, treated or manufactured so it absorbs energy upon impact.

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